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C O N T E N T S.

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34.	R.I.No.9484/7.11.44. O.No.8910/18.12.44.	Question whether the adopted son is entitled to the watan lands belonging to the person who has adopted him, and which are under attahhment under Secs.87 and 88 of the Code of Criminal Procedure. 85-87 (Pl.also see R.L.A.'s No.7696/7.6.50)

Under sec. 6A of the Mussalman Wakf Act, 1923, as amended by Bombay Act XVIII of 1935, the court of D.J. Poona, called upon Sayed Noor Yakubsaheb Hankar, Mutawalli of Tamboli mosque, to furnish a statement of the wakf property in his charge. As he failed to do so even though the was served with a notice, another notice was issued calling upon him to show cause why he should not be prosecuted under sec 10A of the Mussalman Wakf Act. Even then he did not appear before the Court nor did he produce the requisite statement of the wakf property. On 28.10-1937 the Dist.Judge accorded sanction for prosecution of the mutawalli under sec. 10B(1) and he was prosecuted under sec. 10-A. The Addl. City Magistrate, Poona convicted the accused and sentenced him to pay a fine of Rs. 25/-. The Mutawalli was further directed to furnish the requisite statement under sec. 6-A of the Mussalman Wakf Act within one month and in default was ordered to pay a fine of Rs. 2/- per day until he submitted the statement. It appears that by 21.10.39 the amount of fine had risen to Rs. 1154/- and when the Addl. City Magistrate issued a warrant for recovery of the fine under clause (a) of sec. 386(1) of the Code of Criminal Procedure, 1898, it was found that the Mutawalli had no moveable property from which the amount of the fine could be recovered. The Addl. City Magistrate then appears to have issued a warrant to the Collr. under clause(b) of sec. 386(1) authorising him torealise the amount of fine (Rs, 1844/-) by execution according to civil process against the immoveable property of the defaulter. It appears that under provisions of sub-sec.(3) of sec. 39/

of Criminal Procedure Code the Collr. of Poona filed the execution proceedings (Darkhast No. 1103 /42) in the Court of the Jt. First Class sub-judge, Poona. Sayed Noor Yakub's brother has made a petition to Govt. for remission of the fine. Govt. in R.D. have issued an order for stay of execution proceedings pending the final orders of Govt. on the petition.

2 In his report No. W/175 dated 2-12-42 the D.J. Poona, recommends that Govt. should take a lenient view and direct that the recovery of the fine may be waived. In his note dated 29-12-42, the Secy. R.D. seems to think that one of the following alternatives should be adopted;

(a) that as the order regarding the recurring fine is an order of a Criminal Court it cannot be set aside by Govt. by executive instructions, but that the court which levied the fine can waive the recovery of the fine;

(b) In the alternative, to inform the Dist. Judge. Poona that Govt. agree with him that the recurring fine should be remitted and to instruct him not to oppose the application on behalf of the ~~petitioner~~ petitioner for a remission of the recurring fine due which may be submitted to the Criminal Court under the proviso to sec. 10-A (2) of the Mussalman Wakf Act.

The R. D. office which was asked to examine the first alternative, considers that the case is covered by sec. 401(1) of the Code of Criminal Procedure and that Govt. can order remission of the fine straightway without having recourse to the procedure suggested by the Secy. R.D. The R.L.A. is requested to advise whether the view taken in the R.D. office note dated 30-12-42 at pp. 35-36 ante is correct.

Reply may be . The view taken in R.D.'s office note dated 30-12-42 is correct.

R.L.A. Id/ R.S.M. 6/1
Id./ P.N.M. 7/1

U.R. to H.D. No. 191 dated 8th January 1943.

SMR 13-6-56 4 Copies.

The question for consideration is whether the prosecution against Mr. D.V.Nadkarni can be filed in the Court of the Chief Presidency Magistrate at Bombay. Although sanction to the prosecution has been granted under section 197 of the Code of Criminal Procedure, 1898, inasmuch as the charges include a charge under section 193 of the Indian Penal Code, the provisions of sections 195 and 476 of the Criminal Procedure Code apply. The prosecution will have to be filed by a complaint to be made by the Sessions Judge, Sholapur, and it will have to be forwarded to a First Class Magistrate having territorial jurisdiction over the place where the offence was committed. (See Sohoni's Criminal Procedure Code, p.908). The complaint, therefore cannot be filed in the Court of the Chief Presidency Magistrate, at Bombay, but will have to be filed in the Court of a Magistrate having jurisdiction at Sholapur.

Sd./ B.G.K. 24/4

A.L.M. Have the provisions of 197(2) Cr. Proc. Code been considered? Are they not the governing provisions in this case?

L./B.S.M. 24/4

If Govt. makes an order under Sect. 197(2) then the Magistrate named in that order has jurisdiction whether within or without the District, even if Govt. makes an order under that section, the Magistrate will still have to make a complaint or order under Sects. 195 & 476.

Sect. 476 would not apply to the offence under Sect. 182 of PIC.

Would A.G. please consider?

Id/A.S.P. 24/4

A.S. with reference to A it seems to me, with due respect, that Govt. cannot make an order under s. 107(2) which would deny effect to any express provision of the Code.

SMR 13-6-56

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In this matter there will have to be two complaints, one lodged by the Sessions Judge, Sholapur in accordance with the provisions of section 195(1)(b) and section 476 of the Code of Criminal Procedure in respect of the offence under section 193 I.P.C. and the other by Mr. Sarte in accordance with the provisions of section 195(1)(a) of the Code in respect of the offece under section 182. The Secretary, H.D. is correct in thinking that the grant of sanction under sub-section (1) of section 197 of the Code is in itself no bar to a further order under sub-section (2) specifying the Magistrate who is to try the case. Incidentally, such an order would have to be made by the Governor exercising his individual judgment. But the provisions of section 476 of the Code and the fact that the additional charge under section 182 has been sanctioned ex majori cautela may lead to complications. On the whole it seems best to avoid an order under section 197(2) and allow the two complaints to be lodged in the Court of First Class Magistrate, Sholapur. Government would then not be precluded from applying to the High Court under section 562 for transfer. Mr. Nadkarni will doubtless himself apply for transfer to another District and Government may support his application. When that stage is reached Government may suggest any Court it thinks fit.

Sd/- P.N.H. 8/6

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WOR to GD L 3416 dt 10-5-43

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The facts underlying this reference are that on 12-10-1936 one Lokappa Parashuram Kavale filed a criminal complaint against (1) Babu Gangaram and (2) Shamu Bangappa under section 406, I.P.C. for criminal breach of trust in the Court of the Sub-Divisional Magistrate, N.D., Belgaum, in respect of certain bags of salt. Under the orders of the Sub Divisional Magistrate the property was handed over under section 516-A. Cr.P.C. to the accused Babu Gangaram on his furnishing a surety for Rs.700/- pending the disposal of the case. One Goussaheb Khadirsaheb Havaldar stood surety for Babu Gangaram. No personal bond was taken from the accused. Subsequently, the F.C. Magistrate, Gokak, to whom the case was transferred convicted both the accused, but accused Babu Gangaram was given the benefit of section 562, Cr. P.C. and released. The attached property was ordered to be restored to the complainant.

In the meanwhile, Babu Gangaram had disposed of the property and consequently recovery proceedings were set affot. A sum of Rs. 300/- was recovered and the remaining amount still remains due. Babu Gangaram has no moveable property and owns only a house which is under the attachment of the Civil Court. There is therefore no possibility of recovering the balance from him. The surety having died, it is now proposed to recover the balance from his heir by attaching and selling his estate. The deceased's heir owns no moveable property and the question is whether his immoveable property can be proceeded against under the provisions of section 514(2) Cr. P.C. The Public Prosecuter, Belgaum, who was consulted by the District Magistrate on the point in question opines that the word "estate" in section 514(2) Cr. P.C. cannot be

interpreted to include immoveable property. The D.M. has doubted the soundeness of his opinion an... has accordingly requested Government to obtain the opinion of the R.L.A. in the matter.

Sub-section (1) of section 514, Cr. P.C. lays down that whenever it is proved to the satisfac tion of the Court by which a bond under this code has been taken that such bond has been forfeited, the Court shall record the grounds of such proof and may call upon any personbound by such bond to pay the penalty thereof, or to show cause why it should not be paid. Sub-section (2) provides that if sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead. It is not ascert-ainable from the papers whether the bond was actually forfeited. It is however presumed that the bond was forfeited and the forfeiture, took place in the lifetime of the surety; otherwise the question so far as it concerns the present case would be purely academic, for under sub-section (6) of section 514 where a surety to a bond dies before the bond is forfeited his estate shall be discharged from all liability in respect of the bond.

The reasons advanced by the Public Prosecutor, Belgaum, in support of his argument that the word "estate" cannot be interpreted to include immoveable property are-

(1) that the legislature could never have intended to increase the liability of the surety after his death; and

(2) that in interpreting general words and phrases they should be taken to be restricted by the words that precede. It is true that under subsection (2) of section 514 during the surety's lifetime only moveable property can be attached and sold for recovery of the penalty. But the first argument seems to lose sight of the provisions of sub-sections (4) of section 514 under which if the penalty is not paid and cannot be recovered

by attachment and sale of the moveable property of the person so bound. he shall be liable by the order of the Court which issued the warrant under sub-section (2) to imprisonment in the civil jail for a term which may extend to six months. The cumulative effect of sub-sections (2) and (4) is that if the default is made in the payment of the penalty by the surety the Magistrate cannot forthwith direct imprisonment. He has first to order the attachment and sale of the defaulter's moveable property, and if the penalty is not paid or cannot be recovered from such attachment and sale, then and then only can the Magistrate direct imprisonment under subsection (4) (A.I.R.(1928) Rang.310; A.I.R. (1934)All.1046). But the Magistrate is not given power of imprisonment of the legal representatives of the deceased surety. Since n direct action could be taken against the legal representatives of the deceased surety for breach of the terms of the bond, the Legislature appears to have provided that the penalty should be recovered from the whole estate of the deceased surety. But as I have already observed if the surety to the bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond under the provisions of sub-section(6).

In his second argument the Public Prosecutor Belgaum , contemplates the application of the principle of ejusdem generis. This principle has no application in the present case as no general words appear to follow the particular or specific words of the same nature. Further the two words in question do not form part of a list. Sub-section (2) of section 514 provides for attachment and sale of the moveable property belonging to the person (if alive) or his estate if he is dead.

The word "estate" in sub-sections(2) and (6) of section 514 appears to have been used to distinguish it from "moveable property". This word has not been defined in the Criminal Procedure Code and it should therefore be given its ordinary dictionary meaning. As difined insection 3(6) of the Bombay Land Revenue Code, 1879, it means any iterest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same. "The word'estate' doth comprehend all that a man hath property or ownership in, and is divided into 'Real'Real' and 'Personal'. 'Estate' comes from 'stands' because it is fixed and permanent; and imports the most absolute property that a man can have"(Stroud's Judicial Dictionary, p.642). It is a word of the greatest extension and comprehends every species of property real and personal. It comprehends everything a man owns. real and personal and ought not to be limted in its construction, unless corrected with some other word which must neeessarily have that effect It means, ordinarily, the whole of the property owned by one man, the realty as well as the personalty. (Black's Law Dictionary, p. 683). In the light of these definitions the word "estate" as used in section 514(2), Cr. P.C. must be taken to include moveable as well as immoveable property. In view taken by the Public Prosecutor, Belgaum, does not therefore appear to be correct.

Id/ P.N.M. 3/6
Remembrancer of Legal Affairs.

U.R. to H.D. No. 4009, dated the 4th June 1943.

SMR 14-6-56

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Seen and returned.

2 The view taken by G.D. is correct. There will be no objection if inthe concluding part of the letter, Mr. Nadkarni is informed that if he applies to the proper judicial authority for transfer of the case to a suitable Court outside the District Government will raise no objection. G.D. is requested to forward for R.L.A.'s perusal Mr. Nadkarni's report dated 7-4-1943 to which reference is made in the memorial ~~Mm~~, to H.E. at page 87 ante.

Id./P.M.M.

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U.R. to G.D., No. 269 Confl. dated the 24 the July 1943

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Since the Municipal Councillors are not removable from office save by or with the sanction of the Provincial Government(see section 27 of the Bombay Municipal Boroughs Act, 1925) and the alleged offence of defamation is committed by them while acting or purporting to act in the discharge of their official duty, sanction of Government under section 197, Criminal Procedure Code, would be necessary to prosecute them. Whether the imputations made by these councillors against Mr. Bilpodiwala would be saved by exceptions 3 and 9 to section 499, Indian Penal Code, is a matter for the Court to decide. Further, the question of the expediency of granting sanction to prosecute these Councillors is a matter for the administrative department to decide. There is no question of wastage of public money since the prosecution for defamation will be undertaken by Mr. Bilpodiwala at hi own expense.

Sd./P.N.M. 11/9

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U.R. to G.D., No. 6124, dated the 13th September 1943,

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The words "while acting or purporting to act in the discharge of his official duty" in section 197, Criminal Procedure Code, point out that "there must be something in the nature of the act complained of that attaches it to the official character of the person doing it"(Hori Ram Singh vs. The Crown, Federal Law Journal Vol. II-1938-39 p. 153 at p. 179). Under section 6 of the Bombay Village Police Act, 1867, the Police Patel is empowered to detect and bring offenders therein to justice. In exercise of that power the Police Patel in the present case appears to have kept watchmen at the threshin floor of the complainant. Obviously therefore thereis something in the unlawful act which attaches it to the official character of the Police Patel doing it. Consequently sanction of Government under section 197, Criminal Procedure Code, would be necessary for prosecuting the Police Patel. The above opinion is confined to offences that may have been committed before the removal of the grain to the chaudi. The enquiry papers do not reveal how the grain came to be removed to the chaudi. In the absence of that information it is impossible to say whether or not sanction is required in regard to offences that may be constituted by removal and detention in the chaudi.

Id./P.N.M. 15/12

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U.O. to H.D. No. 9212 dated the 16th December 1943.

SMR 14-6-5

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Attention is invited to section 24 of the General Clauses Act, 1897 under which the old Notification continue to be valid being not inconsistent with the amended section 274(2) of the Criminal Procedure Code.

Id./..... 2/3/44

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1639, dated the 2nd March 1944.

SHR 14-6-56
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It appears that the villages of Ammod, Kalambuli andDavalli have been excluded from the sessions davisions of Kanara and included in that of Belgaum. The District Magistrate, Kanara, has therefore no control over these villages in respect of price control measures and it is the District Magistrate, Belgaum who has jurisdiction over them. But the District Magistrate, Belgaum considers that it is very inconvenient for him to enforce price control measures in those villages as they do not adjoin his district. The District Magistrate, Kanara has been on that account enforcing the price control orders in those villages although he has no jurisdiction. To regularise the position the Commissioner, Southern Division, proposes that the District Magistrate Kanara, should be appointed Additional District Magistrate for Belgaum exercising his powers only in these three villages. The question for the consideration of the R.L.A. is whether the proposal is legally feasible.

2 Sub-section (1) of section 10, Criminal Procedure Code provides that in every district outside the presidency towns the provincialGovernment shall appoint a Magistrate of the First Class who shall be called the District Magistrate. Sub-section (2) provides for appointment of any Magistrate of the First Class tobe an Additional District Magistrate. No doubt, District Magistrate must be a First Class Magistrate before the appointment as District Magistrate and his powers include those of a First Class Magistrate. To that extent he is eligible for appointment as an Additional District Magistrate, but there is something extraordinary about the appointment of a

District Magistrate of one district as an Additional District Magistrate of another district. It is not expressly forbidden by the Criminal Procedure Code but it seems that such a step is not contemplated anywhere in the Code and I know of no authority for such a dual appointment. The Additional District Magistrate in this case would not be exercising his powers over any considerable part of the area of his jurisdiction. The exercise of his powers would be limited to the three villages in question. Further, his powers would be exercised usually outside the area of his jurisdiction. He would not be an Additional District Magistrate of much substance. In fact it would be obvious that the appointment is a device to get round some of the difficulties created by the transfer of the three villages from the Kanara Sessions Division. Since the validity of the proposal is open to doubt I am reluctant to support it. Even if the District Magistrate, Kanara could be validly appointed Additional District Magistrate, Belgaum, it is doubtful if he can exercise the powers possessed by the District Magistrate, Belgaum by virtue of Government's delegation order under section 2(5) of the Defence of India Act. See Prabhulal vs. Emperor, 1944 N.L.J.44). It is not clear what administrative difficulties the District Magistrate Belgaum experiences in the application of his price control orders to the three Kanara villages in question. Unless the problems are very urgent it would seem better not to add a further legal complication to the already anomalous position of these three villages. If it is not administratively convenient to restore the three villages to the Kanara Sessions Division the only other alternative seems to be to amend Government's delegation orders under section 2(5) of the Defence of India Act so as to limit the delegation to the District Magistrate, Belgaum by excluding the three villages and to extend the delegatio

delegation to the District Magistrate, Kanara by including the three villages. On such modified delegation, the District Magistrate, Kanara, can pass all necessary control orders and also take necessary steps for enforcement in pursuance of rule 132 of the Defence of India Rules. As for the trial of offences against any control orders, the villages will continue to be under the jurisdiction of the Magistrates of the Belgaum Sessions Division. It is not essential for purposes of delegation that the authority passing the control order should also be the authority passing the control order should also be the authority having jurisdiction to try offences against the order.

Sd/ P.N.Moos 3-3-44

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1713, dated the 4th March 1944.

SMR 14-6-56
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In the present case the appeals filed by the accused under the amended section 411A of the Code of Criminal Procedure, 1898, have already been dismissed by the Bench of the High Court on the preliminary point that the remedy provided by clause 26 of the Letters Patent was still open to them inspite of the provisions of section 7 of the Criminal Procedure Amending Act, 1943(XXVI of 1943). In the circumstances no appeal can be filed under section 411A of the Code. Rule 1 of the Criminal Appeal Rules in order XVII of the Federal Court Rules, 1942, (Gazette of India, Part I, page 1228) provides that whenever any High Court in British India makes any final order in the exercise of its criminal jurisdiction, whether original, appellate or revisional, and gives such a certificate as is mentioned in section 205 of the Government of India Act, 1935, any party in the case may appeal to the Federal Court within thirty days from the date of the order. Since no certificate under section 205 was granted and as no substantial question of law as to the interpretation of the Constitution Act or any Order in Council made thereunder was involved in this case no appeal would lie to the Federal Court.

2 An appeal to the Privy Council cannot be filed unless a certificate under clause 41 of the letters Patent is granted by the High Court or special leave to appeal is granted by the Privy Council. An appeal to the Privy Council lies only under very special and exceptional circumstances. It is not in every case in which it would be shown that the Judge had misdirected the jury that an appeal

will be allowed. (Cf. Mitra's Criminal Procedure Code, 10th Edn. page 1290 Macrea 15 All 310). The B--b-y High Court has held that before grant -ing the certificate the High Court must be satisfied that there is reasonable ground for think -ing that grave and substantial injustice has b:an done by reason of some departure from the principles of natural justice (Ibid. page 1291, Bal Gangadhar Tilak, 33 Bom.221 and other cases referred to). The Privy Council has treated applications for leave to appeal and the hearing of criminal appeal upon the same footing (Ibid,page 1291;Reil vs. The queen 10 A.C. 675;Ex-parte Deeming 1893 A.C. 422). The Board cannot give leave to appeal when the grounds suggested could not sustain the appeal itself; and conversely, it cannot allow appel on grounds that would not have been sufficient for the grant of permission to bring it. Misdirection, as such, irregularity as such, will not suffice(Ibid, page 1291). It ill not intervene unless it can be shown that there has been violation of the principles of justice or some disregard of legal principles. It does not interfere because its conclusions as to guilt or innocence might differ from the jury. The extreme case in which the Judicial Committee would advise His Majesty to interfere is this that it must be established demonstrably that justice itself in its very foundation has been subverted (Cf. ibid, page 1292, Channing Arnold 41 Cal. 1023). In the present case the finding of the Full Bench in the appeal preferred by the convicts was that there was no misdirections nor was there any error on any of the points of law. In the circumstances even if an application for a certificate for leave to appeal is made at this stage it is not likely to succeed. The linked H.D. file 7471/4 is returned herewith.

Sd./P.N.Moos 5-5-44
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U.R. to H.D. No. 3287 dated the 5th May 1944

Office of the R.L.A.

Rule 5 of the Rules contained in the Government of India Notification, Home Departme nt(Judicial) No. F.102/35 dated 12th March 1935 provides that where an accused person having bee delivered by the Magistrate under rule 3 or 4, is not tried by a court-martial for the offence of which he is accused, or ~~some~~ other effectual proceedings are not taken, or ordered to be taken against him, the Magistrate shall report the circumstances to the local Government. The effectual proceedings contemplated are proceedings of a judicial nature and must be directed towards t the determination of the accused person's guilt or innocence and his punishment if found guilty. In the case under consideration it does not appear that the steps taken by the Commanding Officer were sufficient to constitute effectual proceedings taken or ordered to be taken.

Id./.... 29/7/44.

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U.R. to H.D.No. 81-P-Confl, dated the 31st July 1944.

SMH 14-6-56
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By virtue of delegation of power by Government under Government Order, Finance Department(Supply)No. 76(1)/IIA, dated 20-9-1943, the District Magistrate alone can cancel a license under sub-clause(1) of clause 6 of the F.C. Order; 1942. An order cancelling a license passed by a District Magistrate otherwise than as District Magistrate i.e. under a different designation would not be a lawful order under sub-clause (1) of clause 6 of the F.C.Order, 1942; much less would it be so when it is passed by an Additional District Magistrate; for an Additional District Magistrate although invested by a notification under section 10(2) Criminal Procedure Code with all the powers of a District Magistrate under Criminal Procedure Code or under any other law for the time being in force cannot exercise the powers delegated to a District Magistrate by an order under clause 6(1) of the Foodgrains Control Order, 1942.(see Prabhulal Samlal v. Emperor 1944 N.L.J. 44).

Sd./P.N.Moos 25-8-44
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U.O. to F.D.(Supply), No. 6009, dated the 28th August 1944.

SNR 14-6-66
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In his opinion No. 6009, dated the 25th August 1944 the R.L.A. held that an Additional District Magistrate, although invested by a notification under section 10(2) of the Cri-minal Procedure Code with all the powers of a District Magistrate under the Code or under any other law for the time being in force, cannot exercise the powers delegated to a District Magi strate by an order under clause 6(1) of the Foodgrains Control Order, 1942. In view of this opinion F.D.(Supply) feels doubtful whether the Additional District Magistrate can exercise the power delegated by the Home Department (Poll.-War) Notification No. S.D./W.3401. dated 19th December 1941 to all District Magistrates. If the power cannot be said to have been delegated to the Additional District Magistrate then the R.L.A. is requested to advise what action is necessary so far as orders already issued by the Additional District Magistrate who has all along functioned independently of the District Magistrate in respect of supply matters.

2 By Home Department (Poll-War) No, S.D./W 3401, dated the 19th December 1941, issued in exer cise of the powers conferred by sub-section (5) of section 2 ofthe Defence of India Act, 1939 the Government of Bombay has delegated all the powers or duties conferred or imposed on it by such of the rules of the Defence of India Rules as are mentioned in the Schedule annexed thereto to all District Magistrates within the limits of their respective jurisdiction and not to other persons invested with the powers of a District Magistrate. An Additional District Magistrate invested by a

notification under section 10(2) of the Criminal Procedure Code with all the powers of a District Magistrate under the Code or under any other law for the time being in force cannot exercise the powers delegated to District Magistrates by a notification of the Provincial Government under section 2(5) of the Defence of India Act, as he cannot be held to be" a District Magistrate to whom the powers were delegated". Orders already issued by the Additional District Magistrate who have all along functioned independently of the District Magistrates in respect of all supply matters on the strength of the notification under section 10(2) of the Code are therefore void and of no effect. (Cf. Prabhulal Hemlal v. Emp. 1944, N.L.J. 44 and R.L.A.'s opinion No. 6009, dated 25-3-1944). The orders being void ab initio cannot be given retrospective effect (Cf. Emp. V. Dantes 42 Bom. L.R. p. 791 p. 815). But if full legal cover is to be secured to all past acts of the Additional District Magistrates, validating legislation would be necessary.

Sd./P.N.Hoda 6/10/44
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U.O. to F.D. (Supply), No. 6985, dated the 9th October 1944.

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It is doubtful whether in the absence of instances of failure to exercise properly the discretion vested in the Courts under sections 503 and 506, Criminal Procedure Code, the High Court will agree to issue a circular to Magistrates as proposed by D.S.(H.D.). It appears it would be more appropriate in the first instance to issue to prosecuting officers a circular requesting them to urge upon Magistrates in proper cases that commissions should issue and then to move the High Court provided such requests are unreasonably turned down.

Id./.... 8/9/44

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U.R. to H.D. , No. 6328, dated the 11th September 1944.

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The Second Class Magistrate, Patan, convicted two accused under clauses (a) and (h) of section 43(1) of the Bombay Abkari Act and sentenced them to suffer rigorous imprisonment for two months and to pay a fine of Rs. 25/- or in default tosuffer further rigorous imprisonment for 15 days on each count. The accused having failed to pay the fine underwent the imprisonment in default. The fine was nevertheless recovered under a distress warrant issued by the Magistrate. The District Magistrate, Satara, relying on the proviso to section 386 of the Criminal Procedure Code is of opinion that since the Magistrate did not give any special reasons in his order for the recovery of the fine the accused were not liable for the payment of the fine as they had already undergone imprisonment in default. The Commissioner, C,D,is, however, of the view that the fact that the Magistrate did not pass any special order on the distress warrant for the recovery of the fine though the imprisonment in default had been undergone does not appear to debar him from recovering the amount of the fine so long as it is recovered within a period of 6 years from the date of the Magistrate's order convicting him. The question referred to the R.L.A. for consideration is whether the recovery of the fine was legal in the circumstances stated.

2 The law relating to the recovery of fines is given in section 386(1) of the Criminal Procedure Code. The proviso to that section

lays down that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so. The case of Emperor v. Digambar 37, B.L.R. 99 has a direct bearing on the point in issue. In that case Beaumont C.J. observed as follows:-

" The proviso (to section 386(1) applies in terms only to the issue of a fresh warrant and does not require the withdrawal of a warrant already issued before expiration of the sentence in default of payment. But, I think that, in dealing with such existing warrants, the Court should follow the policy which seems to have inspired the proviso to section 386. That policy appears to be that in general an offender ought not to be required both to pay the fine and to serve the sentence in default. But the proviso enables a warrant to be issued for recovery of the fine, even if the whole sentence in default has been served, if the Court considers that there are special reasons for issuing the warrant. I apprehend that the special reasons should be reasons accounting for the fact that the fine has not been recovered before the sentence in default has been served, and any reasons which are directed to that point would be relevant. It may be that the authorities, through no negligence on their part, did not know of the existence of the property or the accused may have inherited property after he served his sentence in default; or there may not have been time to execute the warrant. Matters of that sort would all be special reasons for issuing a warrant after the sentence in default had been served and I think, in the same way, they are reasons justifying Court in refusing to withdraw a warrant already issued".

In the present case it is not clear from the District Magistrate's letter whether the warrant in execution of which some part of the fine was recovered was issued before the expiration of the imprisonment in default or not. If the warrant was issued before the expiration of the imprisonment indefault then the proviso to section 386(1) has no application and there can be no question of the warrant being illegal on the ground that the Magistrate had not stated in writing the special reasons for its issue. Whether the issue of the warrant was justifiable is however another matter. In Emperor v. Digambar cited above, the Chief Justice

expressed the view that in dealing with existing warrants the Court should follow the policy which seems to have inspired the proviso to section 386. Therefore even if the warrant in the present case is an existing and not a fresh warrant it might still be vulnerable in a Court of law on grounds of justification. But it seems unnecessary for Govt. to decide whether or not the existing warrant was issued on justifiable grounds and the fine already recovered should be refunded. On the other hand if the warrant was one issued after the expiration of the imprisonment in default then the proviso to section 386(1) would apply and it would be proper for Government to consider the question of the legality of the facts of the case have been properly ascertained from the District Magistrate. If on inquiry it is found that the warrant is an existing one no further reference to the R.L.A. seems necessary.

Sd./P.N.Koos 14/8/1944
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U.O. to H.D., No. 5769, dated the 16th August 1944.

SMR 14-6-56

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L.D.R.I.No. 7879/11-8-44.

Submitted.

2 Please see the Govt. of India Letter at p. 1-2 ante and the H.D. office note at p. 3 ante. As there are no regulations affecting the powers of the police and Magistrates to hold inquests under Sec. 174 Cr. P.C. in cases of death due to an accident in which an aircraft of the Defence Forces is involved and in view of the inquiry invariably held in such cases by the Military Authorities and the reasons of security, the Govt. of India have suggested that the Provincial Govts. should instruct the D.Ms. that Civil Authorities may not hold inquests in such cases if the deceased person belonged to the naval, military or airforce personnel and was acting in the course of his duties as such and the aircraft in question was operated at the time of the accident under the orders of the naval, military or airforce officer, Govt. of India also suggests that a certificate from the Officer, in pursuance or whose orders the aircraft was being operated at that time, to the effect that the conditions mentioned above are fulfilled, may be accepted as dispensing with the necessity of holding any inquest. It is stated in H.D. office note at p. 3 ante that the provisions of sec. 174 Cr. P.C. seem to be mandatory. Before issuing the necessary instructions to the Dist. Magistrates, H.D. has referred the case for R.L.A.'s advice as to whether the provisions of sec 174 Cr.P.C. regarding the investigation and the report by the police are mandatory.

3 Sec. 174 Cr. P.C. lays down that the

Officer-in -charge of a police station or some other police officer specially empowered by the Provincial Govt. in that behalf on receiving inf ormation that a person has been killed by an accident, shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and unless otherwise directed by any rule prescribed by the Provincial Govt. or by any general or special Order of the District or Sub-Divisional Magistrate, shall make an investigation and draw up a reportof the ap arent cause of death. The secton thus contains a proviso empowering the Provincial Govt. and the D.M's to pass orders, general of special, dispensing with the necessity of investigation and report as suggested by the Govt. of India. Consequently there appears no legal objection if the necessary instructions inthis behalf are issued to the D.Ms. as proposed by H.D.

S.A.S. An order by Govt. as indicated by the Central Govt. would be in the nature of a rule prescribed by Govt. within the meaning of section 174(1)Cr. P.C.

Reply may be : Seen and returned

Id./R.T.K. 19-9

Addl A.L.R. Id./..... 21-9-44
A.L.R. Id./.....22-9

R.L.A. Id./P.N.M.26-9-44

J.H. to H.D. No. 6838 dt. 3.10.44

MR 14-6-56
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The question raised for the considera-tion of the R.L.A. are:- (1) Whether an Additional District Magistrate can exercise the powers of the District Magistrate empowered under section 14 of the Hoarding and Profiteering Prevention Ordinance, 1943; if not,
(2) Whether an Additional District Magistrate is an officer not below the rank of a District Magistrate within the meaning of section 14 of the Hoarding and Profiteering Prevention Ordinance, 1943.

Section 14 of the Hoarding and Profiteering Prevention Ordinance provides that no prosecution for any offence punishable under this Ordinance shall be instituted except with the previous sanction of the Central of the Provincial Government or of an officer not below the rank of a District Magistrate empowered by the Central or the Provincial Government to grant such sanction. An order empowering a District Magistrate under section 14 is an executive order and not a statutory order. Consequently an Additional District Magistrate will not be entitled to exercise the powers of the District Magistrate empowered under section 14 (see Prabjulal Ramlal Vs. Emperor 1944 N.L.J. 44). An Additional District Magistrate is an inferior criminal Court situate within the local limits of the jurisdiction of the District Magistrate (See section 10(3) of the Criminal Procedure Code). Consequently and Additional District Magistrate is not one "not below the rank of a District Magistrate" within the meaning of section 14 of the Hoarding and

Profiteering Prevention Ordinance, 1943. It is not an officer lower in rank than a District Magistrate, since in every district in which there is an Additional District Magistrate, there is also a District Magistrate.

d./F.N.Moos,
Remembrancer of Legal Affairs.

L.R. to F.D. (Supply), No. 8134, dated the 20th November 1944.

SMR 14-6-56
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The view taken by the Commissioner, S.D.(Mr. Bhide) is correct. The watan lands of Gopal Venkatesh were at the disposal of Government under section 88(7) of the Criminal Procedure Code the effect of which was toput an end to any title which Gopal Venkatesh might have had with regard to those lands and to empower Government either to regrant or to dispose of them in any way they liked (see Dattaji v. Narayanrao 25 B.L.R.228). Every succeeding watandar claims through his predecessor as his heir (see 9 Bom. 198; 24 Bom. 606, 7 B.L.R. 135; 32 B.L.R. 1396 and 34 B.L.R. 967). The adopted son Govind can therefore claim through Gopal Venkatesh; but the effect of the order under section 88(7) of the Criminal Procedure Code was toforfeit Gopal's wholeinterest in the watan lands. Consequently the applicant Govind can have no valid claim to the forfeited watan lands of Gopal Venkatesh.

2 Incidentally it may be pointed out that the view taken by the commissioner (Mr. Perry) is not quite correct. In holding that the watan lands in the present case did not lose the watan character he seems to have relied upon an old G.R. 4576, dated September 1, 1880. The facts of the case considered in that G.R. were different. The case of Bhima v. Raghavanracharya 24 Bom. 482 appears to imply that the forfeiture of a watan land involves extinction of the watan tenure of such land. As stated above the effect of the order under section 88(7) of the Criminal Procedure

Code was to forfeit the watan lands of Gopal Venkatesh, and the lands on forfeiture ceased to be of watan character. The entries in the Revenue records should be corrected accordingly.

Sd./P.N.M. 18/12/44
Remembrancer of Legal Affairs

U.R. to R.D. No. 8910, dated the 18th December 1944.
(Please see also R.L.A.'s U.R. to R.D. No. 7896, dt. 7-6-50)

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